



Memorandum

TO: PLANNING COMMISSION

FROM: Stephen M. Haase

SUBJECT: SEE BELOW

DATE: November 13, 2002

Council District: Citywide
SNI Areas: All

SUBJECT: PROPOSED ORDINANCE AMENDING TITLE 20, THE ZONING CODE, TO MODIFY THE PROVISIONS RELATED TO STORM WATER MANAGEMENT INCLUDING THE REQUIREMENTS FOR A STORM WATER POLLUTION PREVENTION PLAN (SWPPP) AND A NOTICE OF INTENT (NOI)

RECOMMENDATION

Planning staff proposes that the Planning Commission forward to the City Council a recommendation for the following actions:

1. Approve an ordinance amending Sections 20.100.470 and 20.100.480 of Title 20 of the San Jose Municipal Code 9 (the Zoning Code) to apply provisions related to storm water management including the requirements for a Storm Water Pollution Prevention Plan (SWPPP) and a Notice of Intent (NOI) to projects disturbing one acre or more; and
2. Adopt a resolution amending the administrative citation fine schedule to increase the fine for violations of section 20.100.470 from \$25 per event per day to \$500 per event per day and for violations of section 20.100.480 of the Zoning Code from \$25 per event per day to \$500 per event per day for small sites (one to five acres) and \$2,500 per day event per day for large sites (five acres and larger).

BACKGROUND

The proposed ordinance would amend sections 20.100.470 and 20.100.480 of the Zoning Code in order to maintain consistency with Phase II of Federal and State requirements for the National Pollutant Discharge Elimination System (NPDES) Program and to clarify Code requirements related to the Storm Water Pollution Prevention Plans (SWPPPs) and Construction Best Management Practices (BMPs) that the State requires of construction projects.

Phase I of the U.S. Environmental Protection Agency's (EPA) storm water program was promulgated in 1990 under the Clean Water Act to address storm water runoff from various discharges, including those from large construction activities disturbing five acres or more of

land. Pursuant to the requirements of Phase I, the City of San Jose's current zoning regulations require all projects with an approved development permit to comply with the City's NPDES General Construction Activities Permit. Projects that result in a land disturbance of five acres or more must implement a SWPPP and file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB). A SWPPP includes site descriptions, descriptions of appropriate control measures, copies of approved State or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges. NOIs track permit coverage and provide an information source to prioritize inspections or enforcement of control measures on construction sites. The contents of an NOI include the project name, address, type of project and receiving stream.

The Storm Water Phase II Final Rule emphasizes the protection of water resources from polluted storm water runoff. It expands the Phase I program by requiring, through the use of NPDES permits, operators of small construction sites with construction activities disturbing between one and five acres, to implement programs and practices to control polluted storm water runoff. Site activities disturbing less than one acre are also regulated as small construction activity if they are part of a larger common development or sale with a planned disturbance of equal to or greater than one acre and less than five acres, or if they are designated by the State.

The Phase II became final on December 8, 1999, with an effective date of three years and 90 days after the final approval date. According to the Final Rule, the Regional Water Quality Control Board (RWQCB) is therefore expected to begin issuing general permits for Phase II designated small construction activity by December 9, 2002, and operators of Phase II designated small construction activity sites must obtain a permit by March 10, 2003. Specific compliance dates will be set by the State.

ANALYSIS

Sections 20.100.470 and 20.100.480 of the Zoning Code require applicants with approved Development Permits for projects that result in a land disturbance of five acres or more to implement a SWPPP and to file a NOI with the SWRCB. Projects disturbing less than five acres of land are not required to implement a SWPPP and are not required to file a NOI although they must still conform with the City's NPDES Storm Water Permit and implement BMPs.

The proposed ordinance would amend the aforementioned sections consistent with Phase II of Federal and State requirements for the National Pollutant Discharge Elimination System (NPDES) Program. In addition, the amendment would provide greater ability for the City to enforce the SWPPP and Construction BMPs required by the State. Applicants with approved Development Permits for projects that result in a land disturbance of one acre or more would be required to implement a SWPPP and file a NOI with the SWRCB in compliance with State and Federal requirements. Projects disturbing less than one acre of land would not be required to implement a SWPPP nor file a NOI, although the projects must still conform with the City's NPDES Storm Water Permit and implement BMPs. Finally, to facilitate City enforcement of the

NPDES requirements, applicants would be required to maintain a copy of the most current SWPPP on site, and to provide a copy to a City representative or inspector on demand.

As an additional measure to provide more substantial City enforcement, Planning staff proposes that the Planning Commission forward to the City Council a recommendation to adopt a resolution to increase the administrative citation fine for storm water runoff violations. Because the rainy season has already started, staff recommends that this resolution be adopted as soon as possible, although the resolution would not be effective as to the new requirements for small sites until the effective date of the ordinance amending the Zoning Code.

PUBLIC OUTREACH

On November 8, 2002, Planning staff sponsored a Developers' Roundtable meeting, which included a discussion of the proposed ordinance and the proposed resolution. Invitations were sent by e-mail to a broad group of developers, consultants, engineers, and others engaged in the development review process. Those who attended the meeting spoke in favor of the proposed changes. Additional outreach consisted of posting the availability of the staff report and draft ordinance on the Planning Divisions' web page. The public hearing notice for both the Planning Commission and City Council public hearings was published in the Post Record on November 6, 2002.

COORDINATION

Preparation of the proposed ordinance has been coordinated with the Environmental Services Department and the City Attorney's Office.

CEQA

The proposed ordinance, PP02-10-311, was found exempt from CEQA per Section 15308.

STEPHEN M. HAASE, DIRECTOR
Planning, Building, and Code Enforcement

